

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

IN THE MATTER OF	)	DOCKET NO. CWA-VIII-97-02-PII
	)	
TVX Mineral Hill Inc.	)	PROCEEDING TO ASSESS CLASS II
P.O. Box 92	)	ADMINISTRATIVE PENALTY UNDER
Gardiner, MT 59030	)	SECTION 309(g) OF THE
	)	CLEAN WATER ACT
Respondent	)	33 U.S.C. §1319(g)

**ADMINISTRATIVE COMPLAINT**

**I. Statutory Authority**

This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act, ("the Act"), 33 U.S.C. §1319(g) and 40 CFR §22.13. The Administrator has delegated these authorities to the Regional Administrator of EPA Region VIII, who has in turn delegated them to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice of EPA Region VIII, who hereby issues this Administrative Complaint.

**II. Findings of Fact and Violation**

1. TVX Mineral Hill Inc. ("Respondent"), owns and operates a gold mining and milling operation, known as the Mineral Hill Mine ("Mineral Hill"), located in Jardine, Montana. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

2. On September 1, 1989, TVX Gold Inc. and Homestake Mining Company (operating as a joint venture known as Jardine Joint Venture) commenced mining operations at the Mineral Hill mine. On or about October 31, 1993, Homestake Mining Company

sold its interest in the Mineral Hill mine to TVX Gold Inc. TVX Gold Inc. is the sole owner of TVX Mineral Hill Inc. Since October 1993, Respondent operated the TVX Mineral Hill mine. The mine extracted gold using zinc precipitation. The general operation included: 1) the extraction of ore and waste rock from an underground mine; 2) waste rock loading, hauling, and deposition; 3) ore crushing, ore loading, hauling, milling, vat leaching; and 4) deposition of the tailings in a tailings impoundment.

3. In July 1994, Respondent submitted a plan of operations to the Montana Department of State Lands (DSL) that outlined a proposed exploration program to access the mineralized zone at Crevice Mountain via an underground tunnel from Mineral Hill to the Crevice Mountain area. The Crevice Tunnel Project was permitted in September 1994 by DSL.

4. In September 1996, Respondent ceased: 1) the extraction of ore and waste rock from the mine; 2) waste rock loading, hauling, and deposition; and 3) ore crushing, ore loading, ore hauling, milling, vat leaching; and 4) deposition of the tailings in a tailings impoundment. In December 1996, Respondent ceased the Crevice Tunnel Project. Respondent's operation currently includes property maintenance.

**Count 1**  
**Discharge from the Old Tailings North Ditch**

5. In August 1993, Respondent excavated the old tailings north (OTN) ditch to drain the old tailings area. Since the

construction of the ditch, flow was present in the ditch on a daily basis and this flow discharged to Bear Creek. Respondent collected samples of the discharge from the OTN ditch on the following dates: September 13, 1993; May 13, 1994; July 27, 1994; March 15, 1995; May 24, 1995; August 23, 1995; October 11, 1995; January 3, 1996; February 26, 1996; April 8, 1996; May 21, 1996; and October 22, 1996. The results of these samples, which contain "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), are summarized in Attachment 1 to this Complaint. Respondent also measured the flow in the OTN ditch on the following dates: August 28, 1996; September 3, 1996; September 5, 1996; September 13, 1996; October 4, 1996; October 10, 1996; and October 19, 1996. The flow data are summarized in Attachment 2 to this Complaint.

6. During an inspection on December 29, 1994, Montana DSL personnel observed a flow of approximately 2 gallons per minute from the OTN ditch.

7. During an inspection of Mineral Hill on October 22, 1996 by EPA and the Montana Department of Environmental Quality (MTDEQ), EPA and the MTDEQ determined that Mineral Hill was discharging "pollutants", within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), from the old tailings north area into Bear Creek.

8. As part of the October 22, 1996 inspection, samples were also collected from the pond below the old tailings north

ditch. The samples showed the following pollutants were present in the discharge:

<u>Parameter</u>	<u>Result</u> <sup>1</sup>
Total Recoverable Arsenic	0.804
Total Recoverable Iron	2.45
Total Recoverable Lead	0.04
Magnesium	0.034
Total Dissolved Solids	322
Total Suspended Solids	41.4
Nitrate	6.24

<sup>1</sup> in mg/L

9. MTDEQ transmitted a joint EPA/MTDEQ inspection report dated November 11, 1996 to Respondent which found that the discharge from the OTN ditch and pond area constitutes a discharge without a MPDES permit.

10. Since at least August 1993 until October 1996, Respondent discharged pollutants within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6) from the old tailings north ditch into Bear Creek.

**Count 2  
Discharge from the 1300 Adit**

11. At one location at the mine known as the "1300 adit" or the "1300 portal", mine drainage has been flowing at a rate ranging from 3 gallons per minute (gpm) to an estimated 200 gpm.

12. Since at least 1992, Respondent has routed the mine drainage from the 1300 adit to a combination of unlined sediment/percolation ponds known as either the "Jardine Sed. Pond", the "North Sed. Pond", the "South Sed. Pond", and/or the north and south storm water ponds.

13. As confirmed by numerous analyses from February 1992 to at least July 1996, mine drainage from the 1300 adit contains "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. 1326(6).

14. According to a summary report of Analysis of Groundwater Data prepared for Respondent by Huntingdon Engineering & Environmental, Inc. and Camp Dresser & McKee, Inc. dated February, 1995, the north and south storm water ponds are the most likely source of nitrate in the shallow groundwater nearby, as evidenced by analyses collected from shallow wells in the immediate area. Nitrates are a component of ANFO (Ammonium Nitrate Fuel Oil) used for blasting at Respondent's mining operation. Nitrates are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. 1362(6).

15. According to a memorandum sent to Respondent by Maxim Technologies, Inc. dated November 9, 1995, Bear Creek below the mine bridge to the old tailings site (in the area of the storm water ponds) is gaining flow from ground water recharge.

16. In at least two samples collected from Bear Creek (February 1995 and January 1996), nitrates increased from the sampling site upstream of the area of the storm water ponds to the sampling site downstream of the storm water ponds.

17. Since at least 1992 until present, Respondent discharged "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6) from the Jardine Sed. Pond and/or the

north and south storm water ponds, through ground water hydrologically connected to surface water, into Bear Creek.

**Count 3**

**Discharge from Union Claim Land Application Site**

18. On or about March 1995, Respondent began land applying mine drainage from the Crevice Tunnel to a land application site known as the "Union Claim" land application area.

19. On August 28, 1995, Respondent's Mineral Hill facility was inspected by the Montana Hard Rock Bureau. The inspection report noted that a seep had developed in the slope below the process ponds and was flowing at about 4 gallons per minute. The inspector postulated that this seep may be due to the "big gun" irrigator that was saturating the area above the office. This seep is known as S-4. The seep was sampled by TVX Mineral Hill personnel on August 21, 1995; September 11, 1995; and September 12, 1995. The results of the samples, summarized in Attachment 3 to this Complaint, show that the discharge had elevated levels of nitrates. Nitrates are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6).

20. Respondent also observed a seep downgradient of the Union Claim land application area, known as Seep S-2, from October 15, 1995 through October 20, 1995. On October 16, 1995, TVX Mineral Hill personnel sampled Seep S-2. The sampling results indicated that the seep contained elevated levels of nitrates (1.37 mg/L). Respondent subsequently moved the "big gun" irrigator further upgradient.

21. On October 16, 1995, Respondent's Mineral Hill facility was inspected by the Montana DEQ in response to a citizen complaint. The inspection report noted extensive slope loss at the area of Seep S-2, with continued subsurface flow discharging to the creek.

22. On November 15, 1995, Respondent reported to the Montana DEQ that about 50 gallons per minute of water was flowing into Bear Creek from the "big gun" irrigator, which was now discharging in another area. This flow, known as Seep S-3, or the "gun flow seep", began November 14, 1995, and continued to flow until at least October 22, 1996. In response to this flow, Respondent replaced the "big gun" irrigator with an emitter system in an attempt to disperse the land application over a larger area.

23. Respondent sampled the discharge from Seep S-3 in the Union Claim land application area on the following dates: November 15, 1995; November 30, 1995; December 7, 1995; December 15, 1995; December 21, 1995; January 4, 1996; January 12, 1996; January 30, 1996 and October 22, 1996. The results of the samples, also summarized in Attachment 3 to this Complaint, show that the discharge had elevated levels of nitrates.

24. On May 22, 1996, the Montana DEQ inspected the Union land application area and observed that the land application system emitters at the Union Claim LAD site were plugging due to

sediment and grout. The report also noted that overland flow was occurring.

25. During an inspection of Mineral Hill on October 22, 1996 by EPA and the Montana DEQ, EPA and the Montana DEQ determined that Mineral Hill was discharging "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), from Seep S-3 in the Union Claim Land Application Area, also known as the "gun flow" seep.

26. MTDEQ transmitted a joint EPA/MTDEQ inspection report dated November 11, 1996 to Respondent which contained the finding that the discharge from Seep S-3 in the Union Claim land application area constitutes a discharge without an MPDES permit.

27. Since at least August 1995 until October 1996, Respondent discharged "pollutants", within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6) from various locations at the Union Claim land application site through ground water hydrologically connected to surface water or through surface water into Bear Creek.

28. The discharges into Bear Creek and into ground water hydrologically connected to Bear Creek described in Paragraphs 5 through 27 originate from "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14) and contain "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6).



29. Bear Creek is a tributary of the Yellowstone River and therefore constitutes "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7).

30. The discharge of pollutants from point sources by Respondent, into the waters of the United States, without first obtaining the requisite permit pursuant to Section 402 of the Act, 33 U.S.C. §1342, constitutes a violation of Section 301 of the Act, 33 U.S.C. §1311.

31. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. §1319(g)(1), EPA has consulted with the State of Montana concerning this action.

### III. Notice of Proposed Order Assessing a Civil Penalty

1. Based on the foregoing Findings, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region VIII hereby proposes to issue a final order to Respondent assessing a penalty in the amount of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) to redress the violations cited herein.

2. The proposed penalty amount was determined by EPA after taking into account the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance history, degree of culpability for the cited violations, any economic benefit or savings accruing to Respondent by virtue of the violations, the Respondent's ability to pay, and the Respondent's good faith cooperation in remedying the violations, all of which

are factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). A final order assessing administrative penalties may be issued thirty days after the Respondent's receipt of this Notice and Complaint, unless Respondent, within that time, requests a hearing on this Complaint pursuant to the following section.

**IV. Notice of Opportunity to Request a Hearing**

1. Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. §1319(g), the Respondent may request in writing, within twenty (20) days of receipt of this Notice, a hearing on the proposed civil penalty assessment. At that hearing, Respondent may contest any material fact set forth in the Findings of Fact and Violation and the appropriateness of the penalty described in the Notice of Proposed Order Assessing a Civil Penalty.

2. Respondent must send any request for a hearing to:

Regional Hearing Clerk (8RC)  
U.S. EPA Region VIII  
Denver Place, Suite 500  
999 18th Street  
Denver, Colorado 80202-2466

3. The procedures for the hearing, if one is requested, are set out in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, a copy of which is enclosed.

4. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom

EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B) to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a final order assessing administrative penalties, and only members of the public who submit timely comment on this proposal will have an additional 30 days to petition EPA to set aside the final order assessing administrative penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the final order assessing administrative penalties.

5. Neither assessment nor payment of an administrative civil penalty pursuant to this section of the Act shall affect the Respondent's continuing obligation to comply with the Clean Water Act, and with any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violation alleged herein.

Date: 6/1/97

JUL 15 1997

Carol Rushin  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. Environmental Protection Agency,  
Region VIII  
999 18th Street, Suite 500  
Denver, Colorado 80202-2466

In the Matter of TVX Mining Inc.  
Docket No. CWA-VIII-97-02-PII

**Attachment 1 - Sampling Data from Old Tailings North Ditch**

Sample Date	Nitrate plus Nitrite as N (mg/L)
September 13, 1993	7.01
May 13, 1994	8.75
July 27, 1994	9.00
March 15, 1995	11.10
May 24, 1995	9.49
August 23, 1995	7.34
October 11, 1995	7.41
January 3, 1996	4.98
February 26, 1996	5.84
April 8, 1996	5.54
May 21, 1996	5.06
October 22, 1996	5.97

In the Matter of TVX Mining Inc.  
Docket No. CWA-VIII-97-02-PII

**Attachment 2 - Flow Data from Old Tailings North Ditch**

Date	Flow (Gallons per Minute)
August 28, 1996	24.5
September 3, 1996	17.6
September 5, 1996	28.8
September 13, 1996	19.1
October 4, 1996	16.7
October 10, 1996	14.4
October 19, 1996	13.4

In the Matter of TVX Mining Inc.  
Docket No. CWA-VIII-97-02-PII

**Attachment 3**  
**Sampling Data from Union Claim Land Application Seep S-3**

Sample Date	Nitrate plus Nitrite as N (mg/L)
November 15, 1995	0.62
November 30, 1995	0.53
December 7, 1995	0.76
December 15, 1995	0.74
December 21, 1995	0.27
January 4, 1996	0.45
January 12, 1996	1.13
January 30, 1996	1.55
October 22, 1996	1.55

**Sampling Data from Union Claim Land Application Seep S-4**

Sample Date	Nitrate plus Nitrite as N (mg/L)
August 21, 1995	37.0
September 11, 1995	25.0
September 12, 1995	25.8

In the Matter of TVX Mining Inc.  
Docket No. CWA-VIII-97-02-PII

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Class II Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original by Hand and Filed: Tina Artemis  
Regional Hearing Clerk  
U.S. EPA Region VIII (8RC)  
999 18th Street, Suite 500  
Denver, Colorado 80202-2466

True Copy by Hand: Elizabeth Bohanon  
Enforcement Attorney  
U.S. EPA Region VIII (8ENF-L)  
999 18th Street, Suite 500  
Denver, CO 80202-2466

True Copy by Certified Mail  
"Return Receipt Requested":  
CWA-VIII-97-02-PII  
with these documents:  
1. 40 CFR Part 22  
2. Public Notice  
3. Certificate of Service

John Hick  
President  
TVX Mineral Hill Inc.  
P.O. Box 92  
Gardiner, MT 59030

Date:

July 15, 1997

Tammy J. James  
Tammy James  
USEPA Region VIII (8ENF-T)  
999 18th Street, Suite 500  
Denver, CO 80202-2466

**U.S. ENVIRONMENTAL PROTECTION AGENCY PUBLIC NOTICE  
NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND  
OPPORTUNITY TO COMMENT**

**SUMMARY:** EPA is providing notice of a proposed administrative penalty assessment for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. §1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. §1319(g)(4)(a).

Class II proceedings are conducted under EPA's "Consolidated Rules and Practices Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 C.F.R. Part 22." The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a herein, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceedings for the assessment of penalties:

In the matter of the TVX Mineral Hill Mine, doing business as the TVX Mineral Hill Inc., P.O. Box 92, Gardiner, MT 59030; EPA Docket No. CWA-VIII-97-02-P11; files on July 15, 1997 with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, telephone (303) 312-6765; proposed penalty of \$125,000.00 for violations of: section 301(a) of the Clean Water Act.

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of any document filed in these proceedings, comment upon the proposed assessment or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of this public notice.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

JUL 15 1997

Ref: 8WM-C

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

John Hick, President  
TVX Mineral Hill, Inc.  
P.O. Box 92  
Gardiner, MT 59030

Re: Administrative Complaint;  
Docket No. CWA-VIII-97-02-PII

Dear Mr. Hick:

Enclosed is a document entitled "Administrative Complaint," Docket Number CWA-VIII-97-02-PII, regarding the notice of assessment of a civil penalty. The United States Environmental Protection Agency ("EPA") has filed this Complaint against TVX Mineral Hill Inc. (hereinafter, "TVX"), located in Jardine, Montana, pursuant to Section 309 of the Clean Water Act ("Act"), 33 U.S.C. Section 1319. The Complaint alleges that TVX has failed to comply with Section 301(a) of the Clean Water Act.

Under Section 309(g) of the Act, you have the opportunity to request a hearing on the alleged violations and the proposed penalty. Such a request must be made within thirty (30) days of receipt of this Complaint. Such request must specify the factual and legal grounds which are in dispute and the specific factual and legal grounds for your defense. If you fail to make such a request within thirty (30) days, you will waive your right to a hearing and the proposed civil penalty may be imposed against you without further proceedings.

Whether or not you request a hearing, we urge you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty, and encourage you to pursue the possibility of settling this matter. If a mutually satisfactory settlement can be reached, it will be formalized in a "Consent Agreement" signed by you and the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, EPA Region VIII. Upon final approval of the Consent Agreement, TVX will be bound by the terms of the Consent Agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty.

Be advised that you have the right to represent yourself or to be represented by an attorney in any meetings or proceedings



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conducted in this matter. You should further be aware that a request for an informal conference does not extend or stay the thirty (30) days by which you must request a hearing.

We have also enclosed a copy of the public notice which will be released to newspapers in your area for publication within a week of the mailing of this complaint.

To explore the possibility of settlement in this matter or if you have questions, please contact Mr. Bill Engle at (406) 441-1140, Ext. 241. If you are represented by legal counsel, please have them contact Ms. Elizabeth Bohanon of our Legal Enforcement Program, at (303) 312-6904. We urge your prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: John Arrigo, MTDEQ